

REMARKS

Claims 1-3, 5-8 and 20-25 are pending. The Examiner's reconsideration of the rejections is respectfully requested in view of the remarks.

As an initial matter, Applicants appreciate the Examiner's Response to Arguments. Applicants have considered the Response and provide the following clarifications.

Claims 1-3, 5-8 and 20-25 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. (US Patent App. 2001/0014868), in view of Freeny, Jr. (US 6,076,071), and further in view of Kaminsky et al. (2001/0047308). The Examiner stated essentially that the combined teachings of Herz, Freeny, and Kaminsky teach or suggest all the limitations of Claims 1-3, 5-8 and 20-25.

Claims 1 and 5 are the independent claims.

Claim 1 claims, *inter alia*, "price setting means for determining a dependency element specified for said product and for dynamically setting a current retail price of said product." Claim 5 claims, *inter alia*, "price setting means for determining a dependency element specified for said product and for dynamically setting a current retail charge for accessing said digital content."

The Examiner suggests that Herz discloses the use of parameterized offers using price, a size, a price presentation, a sales pitch, an advertisement's visual style, etc., and further that Herz discloses a shopper's records of purchases being used to generate promotions including price discounts, advertisements, or a shopping list. Even assuming *arguendo* that the Examiner is correct, these teachings do not extend to how or by what means any of the shopper's records are

selected essentially as claimed (“price setting means for determining a dependency element”). Indeed, Herz offers only the following: “Typically some combination of these will be used” at paragraph [0262]. This offering falls far short of teaching or suggesting the claimed “price setting means for determining a dependency element.” In short, Applicants argue that the cited art fails to teach a means for determining a dependent element and restate the previous argument below for the Examiner’s consideration in view of this clarification; the Examiner’s reconsideration is respectfully requested.

Herz teaches a method for selecting offers that are likely to result in profitable sales based on methods for predicting which offers a current consumer would be likely to accept (see paragraph [0037]). Herz does not teach or suggest how to perform “setting means for determining a dependency element specified for said product” as claimed in Claims 1 and 5. Herz is a user centric system using input relevant to the user including profiles, identity and goals of a shopper (see paragraph [0029-0036]). Herz processes the profile data so as to make customized offers to the current customer (see paragraphs [0003] and [0237]). Herz does not teach or suggest a product having a dependency element, much less a determination of the dependency element, essentially as claimed in Claims 1 and 5. Therefore, Herz fails to teach or suggest all the limitations of Claims 1 and 5.

Freemy teaches a product pricing system (see Abstract). Freemy does not teach or suggest “setting means for determining a dependency element specified for said product” as claimed in Claims 1 and 5. Freemy’s product pricing system uses sales and inventory data, pricing and advertising data, and competition price (see col. 3, lines 49-55). Freemy is silent on a dependency element specified for a given product. There is no teaching or suggestion in Freemy of

determining a dependency element of a product. Therefore, Freeny fails to cure the deficiencies of Herz.

Kaminsky teaches a system for liquidating inventory using an auction (see Abstract). Kaminsky teaches a pricing strategy having a demand price and a buyer auction scheme (see Abstract), which operates per business rules determined by the particular merchant (see paragraph [0037]) relevant to an auction (i.e., a current price, an open order, demand price and bid price)(see paragraph [0049]). Kaminsky's rules specify simple parameters for the auction; in any event Kaminsky adjusts a current price only in relation to a bid price. Kaminsky has no need for determining a dependency element, essentially as claimed. Thus, Kaminsky does not teach or suggest “setting means for determining a dependency element specified for said product” as claimed in Claims 1 and 5. Therefore, Kaminsky fails to cure the deficiencies of Herz.

The combined teachings of Herz and Kaminsky are directed to methods for determining prices in response to an inquiry or bid of a customer. The combined teachings of Herz and Kaminsky do not teach or suggest “setting means for determining a dependency element specified for said product” as claimed in Claims 1 and 5.

Claims 2-3 and 20-23 depend from Claim 1. Claims 6-8 and 24-25 depend from Claim 5. The dependent claims are believed to be allowable for at least the reasons given for Claims 1 and 5. Reconsideration of the rejection is respectfully requested.

For the forgoing reasons, the application, including Claims 1-3, 5-8 and 20-25, is believed to be in condition for allowance. Early and favorable reconsideration of the case is respectfully requested.

Respectfully submitted,

Dated: October 30, 2008

By: /Nathaniel T. Wallace/
Nathaniel T. Wallace
Reg. No. 48,909
Attorney for Applicants

F. CHAU & ASSOCIATES, LLC
130 Woodbury Road
Woodbury, New York 11797
TEL: (516) 692-8888
FAX: (516) 692-8889